No. 90-771

Supreme Court, U.S.
FILED
DEC 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court Of The United States

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., and OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, and ROBERT L. CLAYPOOL,

Petitioners,

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution and WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

William H. Davidson, II - Counsel of Record
David L. Morrison
NAUFUL & ELLIS, P.A.
1901 Gadsden Street
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

Counsel for Respondents

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

TABLE OF CONTENTS

Table of Authorities iii

Statement of the Case 2

Reasons for Denying the Writ 6

A. The Fourth Circuit Court of Appeals correctly held that the Respondents in their individual capacities are entitled to qualified immunity from all liability, pursuant to Harlow v. Fitzgerald..... 7

B. The Fourth Circuit Court of Appeals correctly held that the Petitioner is not entitled to declaratory relief..... 15

C. The decision of the Fourth Circuit Court of Appeals does not warrant review by the United States Supreme Court; therefore, a writ of certiorari should not be issued..... 17

1. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of another United States court of appeals on this same matter..... 17

2. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a state court addressing the issue of Harlow immunity as it applies to the facts of this case..... 19

3. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court..... 21

Conclusion..... 23

TABLE OF AUTHORITIES

Cases

Anderson v. Creighton, 483 U.S. 635 (1987)..... 11, 21

Bloom v. Illinois, 391 U.S. 194 (1968)..... 22

Bobilin v. Board of Education, 403 F. Supp. 1095 (D. Hawaii 1975)..... 9

Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963)..... 8, 14

Duncan v. Louisiana, 391 U.S. 145 (1968)..... 22

Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916)..... 13, 20

Harlow v. Fitzgerald, 457 U.S. 800 (1982)..... 10, 21

Jobson v. Henne, 355 F.2d 129 (2d Cir. 1966)..... 9, 18, 19

Mitchell v. Forsyth, 472 U.S. 511 (1985)..... 4

Papasan v. Allain, 478 U.S. 265 (1986)..... 15

Ray v. Mabry, 556 F.2d 881 (8th Cir. 1977)..... 8

Statutes

42 U.S.C. § 1983..... 3

S.C. Code Ann. § 20-7-4000 (Law. Co-op. 1976)..... 2

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., and OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, and ROBERT L. CLAYPOOL,

Petitioners,

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution and WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

On February 27, 1986, South Carolina Family Court Judge David Maring adjudged the Petitioner, Oliver H. Claypool, Jr., guilty of contempt of court for failure to pay his child support obligations.[1] The Petitioner was committed to the South Carolina Department of Corrections for a period of 150 days pursuant to S.C. Code Ann. § 20-7-4000 (Law. Co-op. 1976). While incarcerated, the Petitioner performed various work assignments,

---

[1] The Petitioner Claypool has also brought suit as the next friend of his children, Oliver J. Claypool, Christine O. Claypool, and Robert L. Claypool; however, the Respondents contend that the children are not proper parties to this action since they do not have a claim under the Thirteenth Amendment. Thus, throughout this brief, the Petitioners will be referred to in the singular, that being, the person of Oliver H. Claypool, Jr.

including work in the kitchen, the laundry, and the book depository. It is undisputed that the work that the Petitioner performed was not onerous, strenuous, or physically demanding.

Judge Maring's Order committed the Petitioner to the South Carolina Department of Corrections for a period of 150 days. The Petitioner, however, was given the opportunity to purge himself of the contempt (i) by paying the arrearages in child support, (ii) by posting a $2500 cash bond, and (iii) by paying a $1500 fine to the Clerk of Court for Horry County.

While in prison, the Petitioner filed this lawsuit pursuant to 42 U.S.C. 1983, alleging numerous causes of action including a claim that his Thirteenth Amendment rights were violated in that he

was required to work while in prison on what he claims to be a civil contempt charge. In deciding a Motion to Dismiss filed by all defendants, the Honorable Matthew J. Perry dismissed all causes of action with the exception of the Thirteenth Amendment claim. Thereafter, the remaining defendants, Flora B. Boyd and William D. Leeke, filed a motion for summary judgment. The Petitioner also filed a motion for summary judgment. Judge Perry, however, denied the cross motions for summary judgment. The Respondents, Flora B. Boyd and William D. Leeke, appealed Judge Perry's Order to the Fourth Circuit Court of Appeals, pursuant to the collateral order doctrine set forth in Mitchell v. Forsyth, 472 U.S. 511 (1985), wherein the United States Supreme Court held that denials of Harlow

qualified immunity raised in a motion for summary judgment are immediately appealable.

The Fourth Circuit Court of Appeals held that the Respondents, Boyd and Leeke, are entitled to Harlow immunity because the law on which the Petitioner relied was not clearly established in 1986. Additionally, the Fourth Circuit ruled that prospective relief was not appropriate because the Petitioner is no longer imprisoned in the South Carolina Department of Corrections. Accordingly, the Fourth Circuit vacated the order of the lower court and remanded for entry of summary judgment in the Respondents' favor.

The Petitioner subsequently filed a petition for rehearing and rehearing en banc, which was denied. Thereafter, the

Petitioner filed a petition for writ of certiorari with the United States Supreme Court. The Respondents oppose the granting of a writ of certiorari in this case.

REASONS FOR DENYING THE WRIT

The Petitioner raises two issues for this Court to consider: (1) whether the Thirteenth Amendment as it applies to persons imprisoned on a contempt charge was "clearly established" law in 1986; and (2) whether the Petitioner was entitled to declaratory relief.

It should be noted that the Fourth Circuit Court of Appeals held that the Respondents in their official capacities, were alter egos of the State of South Carolina and, therefore, were entitled to

Eleventh Amendment immunity. The Petitioner has failed to raise an objection regarding this issue, except as it applies to declaratory relief.

The Respondents maintain that the Fourth Circuit Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

A. The Fourth Circuit Court of Appeals correctly held that the Respondents in their individual capacities are entitled to qualified immunity from all liability, pursuant to Harlow v. Fitzgerald.

The Petitioner takes exception with the Fourth Circuit's decision by arguing that the Thirteenth Amendment is "clearly established" law. The Petitioner bases his argument on the language of the amendment and on the wealth of case law

interpreting it. The Petitioner, however, fails to comprehend the Fourth Circuit's holding.

The Fourth Circuit did not rule that there is no case law interpreting the Thirteenth Amendment or that the amendment as it applies to numerous situations is not clearly established law. To the contrary, there is a multitude of cases addressing the Thirteenth Amendment as it applies to prisoners convicted of a crime, to military draftees, etc.[2]

---

[2] The Thirteenth Amendment to the United States Constitution provides: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Thus, if an individual is imprisoned as punishment for a crime, he would clearly not be protected by the Thirteenth Amendment. Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963). See also, Ray v. Mabry, 556 F.2d 881, 882 (8th Cir. 1977) ("Compelling prison inmates to work does not contravene the Thirteenth

Nonetheless, the Thirteenth Amendment's prohibition against involuntary servitude has been raised in situations which do not benefit from previous judicial decisions. For example, in Bobilin v. Board of Education, 403 F. Supp. 1095 (D. Hawaii 1975), a federal district court addressed the unique issue as to whether a mandatory requirement that school children work in the school cafeteria was violative of the Thirteenth Amendment. Likewise, in Jobson v. Henne, 355 F.2d 129 (2d Cir. 1966), the Second Circuit Court of Appeals encountered the unique issue as to whether the protections of the Thirteenth Amendment applied to persons committed to mental institutions. The issues presented in these cases had

---

Amendment.")

not been specifically addressed by prior courts; therefore, if Harlow immunity had existed at those times, the defendants could have asserted an immunity defense.

Consequently, the Fourth Circuit did not proclaim that the Thirteenth Amendment is not clearly established law. The court recognized the Respondents merely did not know, due to a lack of precedential guidance, how the Thirteenth Amendment was to be applied to the Petitioner's unique situation.

It was precisely for situations such as this that the United States Supreme Court adopted Harlow qualified immunity. More specifically, in Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Court clearly set forth objective standards when the qualified immunity defense would be utilized and gave specific benchmarks to

the judiciary in determining when to protect public officials from undue interference with the exercise of their official duties. In setting forth its guidelines, the Court stated:

> We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.
>
> Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.

457 U.S. at 818. (citations omitted). In Anderson v. Creighton, 483 U.S. 635 (1987), the Court further explained that a court considering a summary judgment motion must look for the "'objective legal

reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." 483 U.S. at 639.

The Respondents in their individual capacities are clearly entitled to Harlow qualified immunity for numerous reasons, some of which were not even cited by the Fourth Circuit Court of Appeals but warrant further discussion in an effort to demonstrate that a writ of certiorari should not be granted in this case.

First, as the Fourth Circuit noted, the Respondents were faced with determining whether to require work from an inmate incarcerated for contempt of court. There is, however, no prior case law addressing whether requiring labor from an inmate incarcerated for contempt is violative of that inmate's Thirteenth

Amendment rights, that is, absent a 1916 state court case from Iowa -- Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916). Based thereon, the Fourth Circuit correctly held that the Petitioner's involuntary servitude claim is not based on a clearly established constitutional right. The court further noted that the Respondents, as reasonable persons, cannot be expected to be versed in a 1916 Iowa case law.

Additionally, as the Fourth Circuit acknowledged, the Respondents were faced with interpreting a South Carolina family court order which did not clearly signify whether the contempt charge was civil or criminal in nature. If the Petitioner was imprisoned for criminal contempt, then he has failed to state a Thirteenth Amendment claim because an individual, who is

imprisoned for the punishment of a crime, is not protected by the Thirteenth Amendment. Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963). And, if the Petitioner was imprisoned for civil contempt, then the Respondents are entitled to Harlow immunity because their conduct was objectively reasonable in light of clearly established law. Certainly, the terms of the family court order, if not clearly providing for criminal contempt, are ambiguous at best. Based upon the order that the Respondents were forced to interpret, one cannot say that the order was so clearly civil in nature that the Respondents erred in requesting the Petitioner to work.

Therefore, it is respectfully submitted that the Respondents in their individual capacities are entitled to

qualified immunity from all liability and that the decision of the Fourth Circuit Court of Appeals was correct.

B. The Fourth Circuit Court of Appeals correctly held that the Petitioner is not entitled to declaratory relief.

Citing the case of Papasan v. Allain, 478 U.S. 265 (1986), the Fourth Circuit Court of Appeals held that declaratory and injunctive relief were not appropriate because the Petitioner is no longer imprisoned in the South Carolina Department of Corrections. The court's holding is clearly correct for a number of reasons. First, the Petitioner is no longer incarcerated at the South Carolina Department of Corrections. Second, he is no longer subject to a South Carolina family court order in that the order of Judge David Maring, which serves as the

basis of this lawsuit, was overturned by the South Carolina Supreme Court. And finally, the Petitioner is no longer a resident or citizen of the State of South Carolina and is no longer subject to the jurisdiction of its courts. Therefore, the Petitioner faces no threat whatsoever of reimprisonment under the same conditions by these Respondents.

In his Petition, the Petitioner contends that the Fourth Circuit's decision regarding this issue is in conflict with this Court's previous decisions which have stated that issues "capable of repetition, yet evading review" may be heard. The Petitioner's argument lacks merit for two reasons. First, as discussed above, the Petitioner's case is not capable of repetition. Second, this issue has not

evaded review in that the Fourth Circuit decided the question presented on its merits.

For these reasons, the Fourth Circuit correctly held that the Petitioner failed to state a cause of action for injunctive or declaratory relief.

C. The decision of the Fourth Circuit Court of Appeals does not warrant review by the United States Supreme Court; therefore, a writ of certiorari should not be issued.

1. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of another United States court of appeals on this same matter.

The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of another United States court of appeals on this same matter. The law governing Harlow qualified immunity is

well settled among the circuits. The application of Harlow immunity in a case with similar facts has not risen previously in any known reported case. In other words, the Respondents cannot cite, nor has the Petitioner cited, any court of appeals case addressing the issue as to whether requiring labor from an inmate incarcerated for contempt (even civil contempt) is violative of that inmate's Thirteenth Amendment rights.

The court of appeals decisions cited by the Petitioner are not in conflict with the decision of the Fourth Circuit. None of those decisions addressed the unique issues presented in this case. Instead, those decisions, with the exception of Jobson v. Henne, 355 F.2d 129 (2d Cir.

1966),[3] addressed the issue of convicted inmates being forced to work, with or without pay, against their will. In short, the decisions cited by the Petitioner reflect that the Thirteenth Amendment is "clearly established" law but that the Thirteenth Amendment as it applies to those imprisoned for civil contempt is not "clearly established" law.

2. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a state court addressing the issue of Harlow immunity as it applies to the facts of this case.

The decision of the Fourth Circuit Court of Appeals does not conflict with

---

[3] In Jobson v. Henne, 355 F.2d 129 (2d Cir. 1966), the Second Circuit Court of Appeals decided that persons committed to mental institutions are protected by the Thirteenth Amendment.

any decision of a state court addressing the issue of Harlow immunity as it applies to the facts of this case. The Fourth Circuit as well as the Respondents acknowledge that the 1916 Iowa state court case of Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916), does provide that the Thirteenth Amendment prohibits an individual imprisoned for civil contempt to be required to work. Nonetheless, the issue before the Fourth Circuit was not whether the Flannagan holding is correct, but rather whether the Flannagan holding was clearly established constitutional law in 1986. Certainly, the Fourth Circuit decided correctly that it was not "clearly established" law, of which the Respondents had a constitutional duty to know and apply. Moreover, the remaining state court cases cited by the Petitioner

involve peonage and other matters with no bearing on the issues raised to this Court.

3. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court.

The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court. Contrary to the Petitioner's assertion, the Fourth Circuit's decision does not conflict with this Court's implementation of Harlow qualified immunity in Harlow v. Fitzgerald, 457 U.S. 800 (1982), or its elaboration in Anderson v. Creighton, 483 U.S. 635 (1987).

The Petitioner maintains that the Fourth Circuit's decision is in conflict with numerous peonage cases from the late

nineteenth and early twentieth centuries. It is clear, however, that this case does not involve peonage. The Petitioner was imprisoned not for failing to pay a debt or perform a service but rather for failing to comply with a court order. That is not peonage.

The Petitioner also erroneously argues that the Fourth Circuit's decision is in conflict with this Court's decisions in Bloom v. Illinois, 391 U.S. 194 (1968), and Duncan v. Louisiana, 391 U.S. 145 (1968). In doing so, the Petitioner raises the issue that he was not provided with the procedural safeguards normally afforded one convicted of criminal contempt. However, that issue was not before the Fourth Circuit Court of Appeals nor is it before this Court. Even if it were, the Respondents would not be the

proper defendants for such a cause of action.

Finally, the Petitioner argues that the Fourth Circuit's decision permits those individuals imprisoned for civil contempt to be required to work while in prison. The Fourth Circuit held that the contempt order in this case was ambiguous and that the Respondents enjoyed Harlow immunity in their individual capacities and Eleventh Amendment immunity in their official capacities.

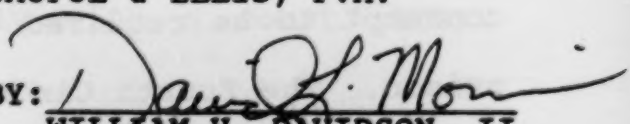
CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the Fourth Circuit Court of Appeals correctly decided this case and

that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

NAUFUL & ELLIS, P.A.

BY: 

WILLIAM H. DAVIDSON, II
DAVID L. MORRISON
1901 Gadsden Street
Post Office Box 2285
Columbia, SC 29202
(803) 254-4190

ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina

December 13, 1990